

A Living Trust can save time and money



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We are all concerned that our hard-earned savings and our homes will be passed to our loved ones without much difficulty or expense. The traditional approach of using a Last Will and Testament is still the most used tool to accomplish an estate transfer. But many people are wary of probate and would like a legal alternative to a Will that avoids probate. One such tool is a revocable grantor trust, more commonly called a Living Trust. People who select a Living Trust as their estate-planning vehicle usually have some very specific goals.

FIRST: People want their assets to be managed properly if they become disabled. To do so, the carefully crafted Living Trust includes selection of a trustee and alternate trustees to be legal owner and manager of the trust assets. The creator of a trust (called the grantor) may select him or herself as initial trustee, then specify that upon disability an alternate trustee will step in to manage the assets and pay the bills. Anyone with a Living Trust should try to have at least two alternative trustees identified in the agreement. That way, there will always be someone responsible for paying the bills, managing the assets and seeing to the personal needs of a disabled grantor.

SECOND: People want to keep their estates private and out of probate court upon death. In a living trust, the grantor

can specify individual heirs, just as would have been done in a Will. When the grantor dies, the trust distributes the estate without probate if everything was set up correctly.

To avoid probate, the grantor must properly assign ownership of his assets to the living trust. The grantor can either convey all his assets to the trust when it is created (a "funded" trust), or the grantor can transfer only a token amount to start the trust's existence (an "unfunded" trust).

Since an "unfunded" trust is essentially empty, the grantor must have a strategy to transfer his assets to the trust at some future date. Typically, the alternate trustee is also named as agent in a durable power of attorney. Then, if the grantor becomes disabled, that agent proceeds to convey the personally held assets of the grantor into the trust as quickly as possible. Once conveyed, the alternate trustee controls the assets, and probate of those assets is not necessary.

On the other hand, if the grantor of an unfunded trust dies too fast or unexpectedly, the unfunded trust provides no significant benefits. The grantor's assets are still owned personally, not by the trust. Consequently, the assets must go through probate court using the grantor's Will. The unfunded trust did not help to avoid probate and was a waste of money.

THIRD: Some people are remarrying multiple times. Seniors who are considering remarriage should use both a prenuptial agreement and a Living Trust. The prenuptial agreement will properly classify assets for legal purposes.

The new couple can avoid creation of community property and avoid insipient comingling of their estates. The Living Trust can then keep their assets segregated. Even if one of them dies, the trust can provide

benefits to the survivor without any implication that the survivor's children have rights in the property. This allows you to care for your new spouse and to care for your children from prior marriages without creating a conflict between them.

FOURTH: Saving legal fees is an important factor. Try to compare the cost of a Living Trust to the cost of a Will and probate. Each situation is different, and there are no universal solutions. Attorneys each set their own rates, so there is no way to predict what you might pay. Typically, preparing a Living Trust costs more than preparing a Will. This is because the trust does more for you and is often more complex to write. But when you include the cost of probating a Will, then the cost of administering a Living Trust can be far less than the cost of a Will with probate. This is especially true if the trust is prepared for a married couple and is written to avoid probate when each spouse dies.

On balance, a Living Trust often saves money. Every situation is different, so you should consult an experienced estate-planning attorney who will consider your goals, your challenges and the taxes that may be imposed on your estate.

Beware the "trust salesman" who may phone you or entice you into a "seminar." If the salesman makes his living selling trusts, then he will try to sell you a trust. He won't discuss the alternatives with much enthusiasm. Be triply cautious because the salesman is likely not a licensed attorney and is thus illegally practicing law when giving legal advice and has no obligation to maintain the confidentiality of information you expose.

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